

R. Hunter Bitner II
Assurance Co. of America vs. MDF Framing

July 12, 2007

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ASSURANCE COMPANY OF)	
AMERICA, an Illinois)	
Corporation,)	
)	
Plaintiff,)	
)	
v.)	No.
)	3:06-CV-169-MO
)	
MDF FRAMING, INC., an)	
Oregon Corporation,)	
)	
Defendant,)	
)	
and)	
)	
ORENCO EAST VILLAGE, LLC;)	
SIMPSON HOUSING LIMITED)	
PARTNERSHIP, LLLP, n/k/a)	
SHLP HOLDINGS, LLLP;)	
PALOMA, LLC; and GREAT WEST)	
CONTRACTORS, LLC,)	
)	
Intervenors.)	

DEPOSITION OF R. HUNTER BITNER II

Taken in behalf of Plaintiff

July 12, 2007

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1 Q. Would you agree with me that this third-party
2 complaint that we have as Exhibit 2 alleges that
3 there was a contract entered between MDF Framing,
4 Inc., and Great West to do framing and other work?

5 A. Yes.

6 Q. And that the claims alleged in the third-party
7 complaint are based on that alleged contract --

8 A. Yes.

9 Q. -- as well as common-law claims arising from
10 those obligations.

11 A. Right. The tort claims.

12 Q. Before the filing of the original third-party
13 complaint, were you aware that there was an entity
14 called MDF Construction, Inc.?

15 A. I can't tell you when I became aware of that.

16 Q. At some point you became aware that there was
17 another entity that was called MDF Construction,
18 Inc.?

19 A. Yes.

20 Q. Is it also your recollection that in the
21 project files there are bids submitted and checks
22 that were issued to MDF Construction, Inc.?

23 A. Again, I know I became aware of it. Yes.

24 Q. You just don't recall how --

25 A. Right.

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1 complaint was the last third-party complaint that was
2 filed in the case and the one that was operative at
3 the time the default judgment was taken against MDF
4 Framing, Inc.? Do you know the answer to that?

5 A. I don't know, unless I see a signed filed copy,
6 I just can't answer that.

7 I'll tell you, there are some oddities within
8 the complaint itself that makes me think this might
9 be a draft.

10 Q. What oddities are those?

11 A. Look at Page 13. I like to think that wouldn't
12 slip by me before something got filed.

13 Q. You mean the line by 67?

14 A. Correct.

15 Q. I thought you just had a unique style.

16 A. Greg, you know me all too well.

17 No, in all honesty, I don't have a recollection
18 one way or the other.

19 Q. Looking at this document and comparing it with
20 the first third-party complaint that's Exhibit 2, it
21 doesn't appear that there are substantive changes in
22 the allegations against MDF Framing, Inc.

23 A. I doubt there are, actually. If there's a big
24 change, it's probably in the parties.

25 Q. Okay. My question is, over the course of time,

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1 were there substantive changes to the claims against
2 MDF Framing, Inc., in amended complaints, or were
3 those amendments done for other purposes?

4 A. If memory serves, they were most likely done
5 for other purposes. The only thing that changed
6 during the process of the litigation is what MDF did
7 on the project, but I don't think that required any
8 amendment.

9 Q. Okay. Meaning what work areas they were
10 responsible for in the construction process?

11 A. Right.

12 Q. But there were never changes in the legal
13 theories that were advanced against MDF Framing,
14 Inc.?

15 A. I don't believe so. We may have added a claim
16 at some point after the first -- the original
17 complaint -- third-party complaint for perhaps
18 additional insured purposes or something of the sort,
19 but that was across the board. It wasn't specific as
20 to MDF.

21 Q. And do you recall what that allegation was?

22 A. Either -- that's why -- and I may be crossing
23 cases here -- I'm hoping I'm not -- that the contract
24 required the parties to add us as an additional
25 insured under a policy, and they owe us insurance, or

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1 they failed to do so, and, therefore, breached the
2 contract.

3 Q. Okay. To your recollection, were there any
4 other substantive amendments to the claims against
5 MDF Framing, Inc.?

6 A. I don't believe so.

7 Q. At any point, can you recall giving
8 consideration to amending the complaint to allege
9 that MDF Framing, Inc., somehow owed an obligation to
10 your clients because it was a successor in interest
11 to the entity MDF Construction, Inc.?

12 A. Not that I remember.

13 Q. Did your office ever serve a notice of
14 deposition on Otto Foster, Sr., or any other employee
15 of MDF Framing, Inc.?

16 A. I don't believe so.

17 (To Mr. Pelandini) I thought you were jumping
18 in.

19 MR. BAIRD: That was your usual intake of
20 breath before an objection, Bill.

21 MR. PELANDINI: That's the signal.

22 THE WITNESS: Just do a sign at some
23 point. Let me know.

24 BY MR. BAIRD:

25 Q. Did you ever hire an investigator in an attempt

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
IN AND FOR WASHINGTON COUNTY

ASSOCIATION OF UNIT OWNERS,)
 Plaintiffs,)
v.) No.: C050290CV
ORENCO EAST VILLAGE, LLC)
 Defendants.)

EXCERPT OF EXAMINATION OF BRIAN HUBBS

Held before

THE HONORABLE JUDGE THOMAS KOHL

June 13, 2006

DATE TRANSCRIBED: August 2, 2007
TRANSCRIBED BY: Bonnie Reed, CET
 Court-Certified Transcriptionist
 Notary Public

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A P P E A R A N C E S

On Behalf of Defendants:

MARTHA HODGKINSON

Hoffman, Hart & Wagner LLP

1000 SW Broadway 20th Floor

Portland, Oregon 97205

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1 June 13, 2006

2 -oOo-

3
4 MS. HODGKINSON: The next witness that we have
5 is Brian Hubbs from RDH who will essentially, Your
6 Honor, establish the damage, the breaches, the basis for
7 indemnification and the dollar amounts that we're
8 seeking today.

9 THE CLERK: Under penalty of perjury, do you
10 solemnly swear or affirm that the testimony you're about
11 to give in this case shall be the truth, the whole truth
12 and nothing but the truth so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Have a seat. For the record would
15 you state your name and spell your last name.

16 THE WITNESS: My name is Brian Hubbs,
17 H-u-b-b-s.

18
19 MR. BRIAN HUBBS, Having first been duly sworn
20 the witness testified as follows:

21
22 D I R E C T E X A M I N A T I O N

23 BY MS. HODGKINSON: .

24 Q. Mr. Hubbs, good afternoon. This isn't a jury
25 trial, so I'm not going to pull out your whole resume in

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1 front of the Court, because I don't think we need to do
2 that. But I would like you to tell the Court some basic
3 essential information about your background, your
4 training, your education, and what you do for a living
5 if you wouldn't mind, please.

6 A. I graduated in 1991 from University of
7 Waterloo, civil engineering. I proceeded to work for a
8 company that I had worked for on one of my summer jobs
9 called Morrison Hershfield, Limited. And they are a
10 forensic consulting firm that deals specifically in
11 building envelope issues. I worked for them for seven
12 years, traveled across Canada, ended up on the West
13 Coast through a number of other offices and started an
14 office in Vancouver, became a principal of Morrison
15 Hershfield.

16 And then about eight years ago left with three
17 other -- two other colleagues of mine and started a
18 small firm called RDH Building Sciences. In the last
19 eight years, we've grown to 50 people. We have offices
20 in Vancouver and Victoria, Canada; and we have offices
21 in Portland and in Seattle in the U.S.

22 And we -- our primary focus is building
23 envelope work. We deal in building forensics,
24 litigation support, this kind of work. And we do work
25 for contractors and developers when they build new

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1 buildings to try to help avoid ever getting in this
2 situation.

3 Q. Just can you give the Court a little bit of an
4 idea of building envelope, describe what that means, the
5 whole...

6 A. We basically look at building enclosures. And
7 we look at it, more often than not, dealing with water
8 ingress problems. However, we do have structural
9 engineers and architects on staff that deal with
10 structural issues and cracking issues and slab
11 deflection issues and that sort of thing. But our
12 primary focus is on air, water and condensation
13 resistance in building enclosures: Roofs, walls,
14 windows, curtain walls, that type of thing.

15 Q. Can you give us an idea of some of the
16 professional societies of which you're a member and any
17 awards or presentations you have?

18 A. I belong to the Professional Engineering
19 Association in British Columbia. So I'm a professional
20 engineer, but in British Columbia, Canada. I'm not
21 licensed in Oregon or Washington. I belong to the
22 (inaudible) Contractor's Association, and the British
23 Columbia Building Envelope Association.

24 I sit on a number of standards committees:
25 Window Installation Standard Committee in Canada, and

1 Locally, I've worked on a number of mediation
2 cases such as McKenzie (inaudible) which are very
3 similar to this case.

4 Q. You testified in arbitration?

5 A. I did, yeah.

6 Q. And in short, you've had a significant amount
7 of experience in evaluating and diagnosing building
8 envelope problems, correct?

9 A. Basically it's been 15 years of solid
10 experience. I really haven't done anything else.

11 Q. All right. And were you asked by the
12 defendants, the Simpson and Great West Entities in this
13 matter, to conduct an investigation of the Club 1201
14 project out in Orenco?

15 A. Yes, I was.

16 Q. All right. And were you asked to -- what were
17 you asked to do, basically, when you were first hired?

18 A. Initially, we were asked to come in and take a
19 look at the buildings and try and give everybody a sense
20 of whether or not what the plaintiffs were saying was
21 what was really out there. I think there was a real --
22 in this case, there was a real want to understand what
23 was going on there, not to necessarily shirk
24 responsibility, but to truly understand what was going
25 on and --

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1 Q. Because it wasn't evident from just looking at
2 the buildings, was it?

3 A. No. I mean, we sort of had a gut feel at the
4 time. But in discussing it with everybody, I think
5 everybody really wanted to move ahead and find out what
6 was really wrong with it. They didn't want to just rely
7 on the other reports in terms of, you know, what they
8 were saying was wrong; primarily roof.

9 Q. And you -- in doing this investigation, you
10 actually physically tested the building on several
11 occasions, correct?

12 A. Yes, we did.

13 Q. Three times, in fact, I think.

14 A. Yeah. We were out there on three different
15 occasions for different investigations, exterior once
16 and interior another time.

17 Q. And you did perform what we call destructive
18 testing on these buildings which is cutting open and
19 seeing what's behind the exterior, correct?

20 A. That's correct.

21 Q. Both inside and outside?

22 A. Yeah.

23 Q. All right. And in addition to doing building
24 investigation, were you provided with copies of reports
25 from the plaintiffs' experts?

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1 This presentation is basically broken out into
2 five sections. The basics of cladding design, just so
3 we all understand what -- how cladding is supposed to
4 work -- the as-built conditions, what the construction
5 documents say, how they relate to code and industry
6 standards and then the summary.

7 From a wall standpoint, walls have to resist
8 air leakage and rain leakage and precipitation. And a
9 barrier of face-sealed wall gets wet from rain and when
10 wind blows against it, it pushes that rain through the
11 wall. And if there's a hole, it comes right in.

12 On a rainscreen or a drain-screen type wall,
13 like we have primarily at Orenco, there's a space or a
14 cavity behind the cladding, which allows the water to
15 drain down and get out. So the exterior surface sheds
16 most of the water, and then anything that gets behind
17 that is stopped from getting inside by --

18 THE COURT: The cladding is the exterior of the
19 wood or whatever?

20 THE WITNESS: That's right.

21 Q. So here's just a section. And what I'm going
22 to talk about in the report are two different surfaces,
23 the water-shedding surface and the water resistive
24 barrier. And this is real key because MDF was
25 responsible for putting on the WRB and not the WSS, not

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1 the water-shedding surface.

2 So in any given wall assembly, like we have at
3 Orenco, we've got a water-shedding surface, and that's
4 supposed to deflect or drain the majority of the water;
5 and that will be the siding or the brick or the windows
6 or the flashing or caulking, those all make up the water
7 shedding surface.

8 The water-resistive barrier or the WRB is
9 something that's hidden behind. It's the building paper
10 or the Tyvek. And that's supposed to stop the water to
11 ever touching something that's moisture sensitive. And
12 that's supposed to be installed in a way that sheds
13 water and that's fairly water resistant. So the
14 building paper and in some cases on this building a
15 product called Amowrap, which is a green product, you'll
16 see. So the WRB must be shingle lapped and continuous
17 to perform this function of a secondary line of defense.

18 The way these wall assemblies need to work is
19 most of the water has to be stopped on that outside
20 surface, you can't have both water draining down in
21 between or it just overloads the paper's ability to shed
22 water. They're really intended to kick in when you have
23 a bad rain storm or a significant event but not to be
24 wetted every day, all day.

25 So when you talk about that, it's all a

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1 balance. You have to allow to dry long enough so that
2 it can dry out before you wet it again or else it stays
3 wet. So it's just like, you know -- it's a balance, you
4 have to keep it dry; but when it does get wet, you have
5 to allow a sufficient time to dry out or you have a
6 problem.

7 So the leakage mechanism that I'm going to talk
8 about on the next slides is two-fold. One, the water
9 shedding surface has some significant discontinuities in
10 it at both masonry and siding, particularly at the
11 interfaces between the two, and that allows large
12 quantities of water to get behind the water shedding
13 surface. So that's deficiency number one.

14 These large quantities flow between the
15 cladding and the water-resistive barrier. And then
16 there's back lap joint, holes, and a number of other
17 deficiencies in the weather resistive barrier that will
18 allow that water to enter the interior of the building
19 and to deteriorate the moisture-sensitive parts of the
20 building.

21 So it's really a -- there's two holes, and if
22 you had sealed either one, there would have been a lot
23 less problems. But the combination of the two is why
24 we're here.

25 So just as a matter of background -- this

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1 doesn't relate to MDF -- but these are sort of the
2 typical deficiencies that we're seeing in the water
3 shedding surface or the outer layer.

4 These are pictures here where we've done
5 interior and exterior openings in the same location.
6 And you can see here, this is a typical flashing at a
7 siding-to-brick interface. And you can see there's
8 holes in the caulking here, and you can see it's back
9 sloped and there's just a mess of caulking around these
10 areas where water can get through it, contact that
11 weather-resistive barrier. And you can see underneath
12 that location, taking it off, there's rust on the
13 flashing, showing that water is getting in underneath
14 the brick. There's no end dam on this flashing, so
15 water can flow off of it, the end of it.

16 Q. (By Ms. Hodgkinson) What's an end dam?

17 A. There's a slide in about three slides and I'll
18 show that in just a bit out of order.

19 Here's some discontinuities in the building
20 paper, but we're not talking about that now.

21 And then here's the deterioration of the
22 underlying sheathing, the sheathing board behind the
23 weather-resistive barrier, which is moisture sensitive.
24 So here water could get behind the flashing, because
25 it's not shingle lapped. And here it can drop off the

1 surface was someone else's.

2 THE COURT: Okay.

3 A. So these are the typical WRB deficiencies that
4 we're seeing. This is one at the brick veneer where we
5 have -- there's a combination -- I have a detail in a
6 second that will show this. But there's a sill flashing
7 under the window and then there's a -- this is the WRB.
8 And that should be shingle lapped, like a shingle. So
9 under the window, the flashing should be lapped over top
10 of that, so any water that gets in can drain out.

11 In this case, the WRB was installed and then
12 just taped to the frame of the window here. But as you
13 can see, the tape actually isn't sealing it to the
14 window frame. So really it's just laid up against the
15 window frame. So any water that gets through that weep
16 hole or failed caulking just runs around the window
17 frame and goes right in behind the WRB.

18 THE COURT: So that should be underneath the
19 window --

20 THE WITNESS: Should be tucked underneath,
21 that's right.

22 THE COURT: Got you, okay.

23 A. This is an area where we did an exterior
24 opening and an interior opening. It's just a typical --
25 it doesn't look too bad. We opened it up --

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1 THE COURT: My question is: Wouldn't an
2 inspector on the job -- if an inspector is doing their
3 job, look at that and say -- I mean, it would be obvious
4 that that's not tucked up underneath the window.

5 THE WITNESS: Yeah. Well, this is the thing,
6 we looked back at the Marx/Okubo report, he identifies
7 that and those reports went to MDF.

8 THE COURT: So at the time they were installing
9 the barrier there, they were informed that they were
10 being installed incorrectly then; is that what you're
11 saying?

12 THE WITNESS: I'm not sure about the exact time
13 line, but certainly when I look back at Marx/Okubo's
14 reports, they're identified and they were distributed to
15 MDF. So not only were they doing it wrong, but they
16 knew they were doing it wrong.

17 THE COURT: Hum.

18 A. These are typical deficiencies that we're
19 seeing at the WRB; these are just holes. Behind those,
20 we're seeing fungal growth on the exterior sheathing.
21 Here we have just damage -- you have some building
22 paper. With the building paper installed over top. So
23 it was MDF's --

24 THE COURT: Is that an MDF problem?

25 THE WITNESS: Well, MDF was responsible to put

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1 this material on as well as the WRB.

2 THE COURT: The (inaudible).

3 THE WITNESS: Yeah.

4 THE COURT: Okay.

5 A. Here's another unit, 405, where we made an
6 interior and an exterior opening. And here we're
7 finding, like, lack of building paper. So this was
8 around a window frame, there's just a gap in the
9 building paper there where it didn't get put on.

10 Here's another gap here.

11 Here's a gap at the jam of the window. There's
12 a seal between the building paper and the window flange,
13 and it's just a gap here. And we follow this down to
14 the bottom, we're finding fungal growth right below
15 that.

16 Here we have a reverse lap, a back lap. So
17 obviously when you want something waterproofed you
18 shingle lap it. This is reversed, the wrong direction.
19 We saw that in a number of cases.

20 Here's where we've got a reverse lap and then
21 it kind of squishes over and does a shingle lap, but
22 it's only half an inch. It's supposed to be at least 2
23 inches.

24 Q. I'm sorry to interrupt. What happens when the
25 reverse-lap situation occurs?

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1 water gets behind it and goes straight in. And you can
2 see damage at the base of that here.

3 Q. (By Ms. Hodgkinson) And again, that's an MDF
4 responsibility, that flashing?

5 A. No. The flashing I think was installed by --

6 Q. The sider?

7 A. The sider, I think.

8 Q. But the WRB, the integration of the WRB was
9 MDF?

10 A. Yeah, that's MDF's responsibility. They need
11 to leave it loose --

12 Q. Right.

13 A. -- come back and tie it in.

14 This is our doors on to the balconies, and we
15 just took a little area over around here to see what
16 that looked like and we found fungal growth on the
17 interior.

18 This is an important one here. MDF -- one of
19 MDF's responsibilities, under the Marx/Okubo direction
20 was to install a flashing, a waterproof flashing under
21 the windows. Quite often, we'll find miter joints in
22 windows are a cause of deterioration in these kind of
23 cases. And so nowadays, you install a waterproof
24 membrane under your window. So if your window leaks, it
25 catches it and it kicks it out to the outside. So that

1 was one of the responsibilities.

2 And here's one opening that we did where
3 they've installed it and then it's just not here from
4 here to here, which is just a really, really poor job of
5 making sure that was continuous. And underneath there,
6 we see signs that water has been getting in there. Not
7 a lot of damage on that one.

8 And here's just a shot here from the exterior
9 of that same situation. We have our weather-resistive
10 barrier here on Building 18, it comes up and there's the
11 tape that's supposed to tape that to the window flange.
12 They intended that to be a water-tight seal, but you can
13 see at the top of the tape there's a green. So the
14 tape's not actually sticking to the window flange, it's
15 just sticking to the WRB. So there's no seal there.
16 Any water that leaks out -- this weep hole that tucks in
17 back here, it just goes right in behind.

18 And you can see here, this is water here that's
19 trapped between the sub sill membrane, which was
20 installed in this case, and the WRB. So that's water
21 trapped in there.

22 And here's water wetting -- this is soaking wet
23 Gypsum board here. And you can see the end of this
24 flashing is about here. So that water that's stuck here
25 is going down, wetting the Gypsum board and it's raising

1 anything -- so that any rain would just be deflected off
2 here and this sealing joint would last quite a long
3 time.

4 THE COURT: That's a siding problem, right?

5 THE WITNESS: Yeah.

6 THE COURT: That's a siding issue. Okay.

7 A. But then anything that did leak would leak down
8 here a shingle lap over this and drain out harmlessly
9 out the bottom.

10 So to summarize everything: From a masonry and
11 siding point of view, there were deficiencies. And we
12 don't need to go through those again. And then from a
13 weather-resistive barrier standpoint, which is MDF, the
14 WRB was not installed in accordance with the
15 construction documents, industry practice or the
16 building code as follows. It -- it had back lap joints,
17 physical damage and inadequate seals and it wasn't
18 installed in some areas. As a result, both water which
19 penetrated behind the water shedding surfaces, such as
20 the masonry walls, lap siding and windows, was able to
21 come into direct contact with the moisture-sensitive
22 sheathing and result in a significant and systemic
23 levels of decay in the building.

24 Q. Are you done with your explanation, Mr. Hubbs,
25 of the damage you observed and how it worked?

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1 A. Yes.

2 Q. Okay. As part of your review for the
3 defendants in this matter, did I ask you to review the
4 repair bid of RH Construction, which was repaired at the
5 request of the defendants, to make a determination as to
6 what the responsibility of MDF was -- percentage
7 responsibility of the overall repair costs?

8 A. Yes, you did.

9 Q. Okay. And before we get to that subject.
10 Based on your investigation and all the things that
11 you've done, the building investigation, the contract
12 documents review, do you have an opinion as to whether
13 MDF did not meet the required standards of the then
14 applicable building code?

15 A. They did not.

16 Q. Okay. And you just described that in your --
17 nor did they perform to industry standards at the time;
18 is that correct?

19 A. That's correct.

20 Q. And they did not provide a weather-resistive
21 barrier to keep out moisture that came through the
22 building envelope, correct?

23 A. Correct.

24 Q. All right. Go ahead. On to your analysis and
25 evaluation. I know that you did a number of

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1 calculations based upon the R&H bid and their line items
2 for repairs. And if you could explain to the Court
3 exactly what -- how you arrived at that figure that you
4 arrived at and what that is?

5 A. Sure. What I did here is I broke down R&H's
6 bid here. These are the basic categories. I combined
7 some categories together, but these are the basic
8 categories and line items from their bid dated 7
9 February '06.

10 THE COURT: So they came in to give an estimate
11 on the costs of repairing, not only the
12 weather-resistant barriers issues of MDF, but the whole
13 project?

14 MS. HODGKINSON: The whole building complex,
15 correct.

16 THE COURT: Okay.

17 Q. (By Ms. Hodgkinson) And the bid is separated
18 into line items so you can see which trade is
19 responsible for what repair.

20 A. That's right. So what I ended up doing here,
21 just trying to be fair to everybody, was to apportion it
22 out in basic rough accordance with the failure
23 mechanism. So if there was two items that resulted in a
24 failure, I split it 50/50; if there was three, I divided
25 it three ways; if there was one that I thought was a lot

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1 less then the other, but both were required, I divvied
2 it that way.

3 So this is how I broke it down. What I did,
4 too, is I also left -- basically everything in yellow
5 here is a specific item to repair a specific deficiency.
6 These are the soft costs, the general conditions, and
7 the insurance and everything else; and I left those out
8 to the end and then I divided those up by the
9 responsibility overall of the hard items. So it will
10 make sense once I go through it.

11 So when we talk about demolition of masonry and
12 siding, that's taking off the masonry and the siding. I
13 took 50 percent mason and 50 percent framing --

14 Q. Why?

15 A. -- and WRB.

16 Just because you needed both people to have
17 that problem. The mason wasn't solely responsible and
18 neither was the WRB and framing guy.

19 When they talked about the putting back on the
20 new masonry, this is the new --

21 THE COURT: Let me -- MDF was WRB and framing?

22 THE WITNESS: Yes.

23 THE COURT: Okay.

24 A. And you know what, there was a couple of other
25 contractors that did WRB and framing, and I kind of sort

1 that out at the very end.

2 So when it came down to whether or not -- when
3 we're installing new weather-resistive barrier, I put
4 100 percent of that to the guy that should have
5 installed it right in the first place. But when it came
6 down to putting new brick and new siding on and new
7 accessories, I put it 50/50. Because that brick and
8 siding needed to come off and put back on for two
9 reasons: One to fix the WRB, and one to fix the overall
10 water-shedding surface deficiencies.

11 Q. (By Ms. Hodgkinson) So that needs to come off
12 to fix the WRB anyway?

13 A. That's right.

14 So I portion those all 50/50 from a siding
15 standpoint.

16 We get down to the roofing, new roofs on all
17 buildings. Primarily the roofing issues were roofing
18 related. However, the framer -- and the guy that did
19 WRB and the framer put on the sheathing membrane around
20 the roof and also put the sheathing on the roof, and
21 there were some holes and discontinuities in that, and
22 there was some warping that was claimed by the roofer.
23 So we put some responsibility there, but it wasn't the
24 majority. So I came up with 15 percent.

25 Walls, the sill pans, the flashing, and the new

1 caulking, I divided it up between the sider and the WRB
2 installer, 50/50 for the same reason.

3 Q. You can use MDF because it's MDF we're talking
4 about here today.

5 A. MDF, okay.

6 Doors and windows. New windows, we had a
7 contingency in there to replace 25 percent of the
8 windows because we knew some would be leaking. I put
9 that 100 percent on the window trade. But in terms of
10 reinstalling the windows, taking them out and putting
11 them back, I split that out 50/50 because they needed to
12 come out because the windows were bad, but they also
13 needed to come out to fix the WRB.

14 And then finishes, new exterior sheathing, and
15 exterior painting, 50/50 with the sider for the same
16 reasons.

17 Now what I did is I took those and I calculated
18 it out how much those were based on those last
19 percentages and then I just divided -- I added up the
20 costs and divided by the 7 million to get everybody's
21 proportional responsibility for the general conditions
22 items. So just the WRB trade had 43 percent of the
23 overall issues, so he took 43 percent of the close out,
24 electrical allowance, insurance, and general conditions.
25 And that's how I calculated out the responsibility for

1 the trades for the non-hard cost items.

2 Q. Did the general conditions include things like
3 scaffolding, mobilization, all the things that have --

4 A. Yeah.

5 Q. -- all the work?

6 A. And you can't really say, you know, this is
7 directly -- directly attributable to one trade.

8 Q. When you're doing this type of line item
9 extrapolation, it's common to attribute a percentage of
10 that general conditions to a particular trade in
11 accordance with their responsibility?

12 A. Yeah. I think it's the fairest way to do it
13 because you have -- you know, the person that's doing
14 the most work, needs the most scaffolding and needs the
15 most site coordination and insurance. So typically, you
16 can break it down that way.

17 And then what I did is I broke down the total
18 number here, which I associated with WRB of \$3 million,
19 give or take, to the different trades. So there were
20 three trades that did WRB work: Big Dog, Bellinger, and
21 MDF. MDF did 10 of the 21 buildings, and I just broke
22 that down. I took 48 percent of the 3 million and came
23 up with a number for MDF. And that's based on the R&H
24 estimate of \$7 million.

25 Now, we settled for 5 million. So what we

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1 decided to do is to take this number because that's
2 proportionately right and just prorate it for 5 million.
3 So we took 71 percent, 5 million over 7 million, of that
4 number and came up with \$1,025,000 to arrive at that
5 number.

6 Q. So this was your mathematical calculation to
7 arrive at the figure that fairly represents the amount
8 of money paid in settlement versus the repair bid?

9 A. That's right.

10 Q. And the calculation reflects that MDF's portion
11 for the work that it physically did on the buildings for
12 the WRB that's its proportionate share, and that's the
13 amount that what you calculated under 5 million that's
14 the ultimate number that they would be responsible for?

15 A. That's correct.

16 Q. Okay.

17 (Conclusion of testimony.)
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